

# EXHIBIT 5

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
CASANDRA VENTURA	:	
	:	Civil Case No.: 23-cv-10098
Plaintiff,	:	
	:	
v.	:	
	:	<b><u>COMPLAINT</u></b>
SEAN COMBS, BAD BOY ENTERTAINMENT,	:	
BAD BOY RECORDS, EPIC RECORDS, COMBS	:	<b><u>JURY TRIAL DEMAND</u></b>
ENTERPRISES, LLC, and DOE CORPS. 1-10,	:	
	:	
Defendants.	:	
-----X	:	

**TRIGGER WARNING:  
THIS DOCUMENT CONTAINS HIGHLY GRAPHIC INFORMATION OF A  
SEXUAL NATURE, INCLUDING SEXUAL ASSAULT**

Plaintiff Casandra Ventura (“Ms. Ventura”) hereby alleges, as and for her Complaint against Defendant Sean Combs (“Mr. Combs”), Bad Boy Entertainment, Bad Boy Records, Epic Records, Combs Enterprises, LLC, and Doe Corporations 1-10 (together, “Defendant Corporations,” and together with Mr. Combs, “Defendants”) as follows:

**PRELIMINARY STATEMENT**

1. Defendant Sean Combs is a rapper and record executive popularly known by his stage names Puff Daddy, P. Diddy, or Diddy. Mr. Combs came to fame in the early 1990s with his record label Bad Boy Records. He rose to prominence in the music and entertainment industry over the decades and is regularly referred to as a hip-hop mogul.

2. In 2022, Mr. Combs received the Lifetime Achievement Award at the BET Awards. During his acceptance speech, Mr. Combs stated, “I have to give a special shoutout, thank you, love, to the people that was really there for me.” He named a number of people, before adding, “[a]nd also Cassie, for holding me down in the dark times, love.”

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UNITED STATES DI  
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RODNEY JONES,

F

v.

1475 (JPO)

SEAN COMBS, ET A

one Conference

Defendants.

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New York, N.Y.  
April 9, 2024  
3:30 p.m.

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

T.A. BLACKBURN LAW, PLLC  
Attorneys for Plaintiff  
BY: TYRONE A. BLACKBURN

PRYOR CASHMAN LLP  
Attorneys for Defendants UMG,  
BY: DONALD S. ZAKARIN

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1 THE COURT: Good afternoon. This is Judge Oetken.  
2 Mr. Hampton will call the place, please.

3 (Case called)

4 MR. BLACKBURN: Good afternoon, your Honor. This is  
5 Attorney Tyrone Blackburn, T.A. Blackburn Law, PLLC, Brooklyn,  
6 New York.

7 THE COURT: Good afternoon.

8 MR. ZAKARIN: Good afternoon, your Honor. Don Zakarin  
9 of Pryor Cashman for defendants Universal, Motown Records and  
10 Sir Lucian Grainge.

11 THE COURT: Good afternoon. Is anyone else on the  
12 call who wanted to identify yourself?

13 All right. I think Mr. Zakarin is the only lawyer who  
14 has appeared for any parties in the case on the defendant's  
15 side. Mr. Blackburn, have you served the other defendants?

16 MR. BLACKBURN: Your Honor, I sent out a Rule 4 waiver  
17 of service to the individuals who presented themselves. I  
18 guess we'll call them counsel, Mr. Combs' counsel and counsel  
19 for the remaining defendants, and they had not responded to any  
20 of my messages, so I sent out my process server to serve them.

21 THE COURT: What was that?

22 MR. BLACKBURN: I'll give you the date. One second.  
23 Would you like the date for the Rule 4 waiver sent, or are you  
24 asking for the process service?

25 THE COURT: Both, please.

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1 MR. BLACKBURN: Okay. The Rule 4 waiver email was  
2 sent on March 13, and then the process server -- one second.  
3 Let me pull that up.

4 MR. ZAKARIN: Your Honor, this is Don Zakarin. For  
5 whatever it's worth, we never received any email about any  
6 waiver of service, as your Honor knows. We unilaterally  
7 voluntarily waived service at the same time that we served our  
8 motion to dismiss, but we never received any such waiver  
9 notice.

10 MR. BLACKBURN: Right. I never sent it to you.

11 THE COURT: Did you send it only to counsel for  
12 Mr. Combs?

13 MR. BLACKBURN: Yes, Combs and the remaining  
14 defendants.

15 THE COURT: And the remaining defendants?

16 MR. BLACKBURN: Yes, because they are all represented  
17 by the same attorneys. At least, that's what was represented  
18 to me.

19 THE COURT: Okay. Got it. All right. So Mr. Zakarin  
20 represents UMG, Grainge and Motown, and the defendants, you  
21 understand, are represented by someone to whom you sent a  
22 waiver by email. And when did you send the process server?

23 MR. BLACKBURN: I'll tell you right now. I'm pulling  
24 that up. One second. I sent the process server five days  
25 after that, and I have not gotten any receipts of service back

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1 yet.

2 THE COURT: Okay. All right. Well, I scheduled the  
3 call in response to the various letters I've received mainly  
4 discussing the issue of what is the operative complaint here.  
5 I wanted to get everyone on the same page because I don't  
6 really want to decide a motion to dismiss based on ten letters  
7 about futility rather than a single brief targeted at a single  
8 complaint, because that's not efficient, at least not for me.

9 So the state of play here is that plaintiff filed the  
10 initial complaint, which was 335 paragraphs on February 26.  
11 Then on March 4, another complaint was filed, which was 370  
12 paragraphs, which was marked complaint, but I guess we're  
13 treating that as the first amended complaint because it was  
14 different from the first one, even though the first one was  
15 bounced for a filing error. And then on March 25, plaintiff  
16 filed another complaint, a third complaint, which was 402  
17 paragraphs, also bounced for a filing error, and then bounced  
18 again on March 27 because the clerk realized that no leave had  
19 been granted and this was actually the second amended complaint  
20 and, therefore, not fileable as a right.

21 So Mr. Zakarin for the UMG defendants filed a motion  
22 to dismiss March 27, which purports to dismiss the first  
23 amended complaint even though various allegations about his  
24 clients have been removed in the second amended complaint. And  
25 he opposes the filing of the second amended complaint even

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1     though some of the most disturbing allegations are removed in  
2     the second amended complaint because he wants to argue that  
3     it's untimely. So it's kind of an odd state of play. As I  
4     say, I don't particularly want to have to decide motions as to  
5     two different targets, as opposed to one different target,  
6     particularly if some of the allegations are superseded by a  
7     second amended complaint and are not made in that complaint.  
8     And I know there's a Rule 11 sanctions issues out there as  
9     well.

10           So I guess, Mr. Zakarin, I'll turn to you first, and I  
11     understand why you filed the letters and why you wanted to move  
12     to dismiss the first amended complaint, because you feel  
13     strongly that there are baseless allegations in there, and if I  
14     need to, I'll decide that as a Rule 11 sanction or otherwise.  
15     But why shouldn't I allow the filing of the second amended  
16     complaint given that it removes some of the allegations, and I  
17     can then address a single motion to dismiss.

18           MR. ZAKARIN: Your Honor, and I understand the  
19     efficiency of it, but from our perspective, you are correct  
20     that the most offensive allegations are gone. But the  
21     allegations that remain are still unfounded both factually,  
22     legally. It's clear that they have no basis in fact, and they  
23     don't even have a good-faith basis for them. And even if you  
24     assumed the truth of the allegations, it doesn't satisfy the  
25     pleading burdens that they have with the claim they make

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1 against us. So whether it's the amended complaint, the second  
2 amended complaint, they don't state a claim. And so, there's a  
3 futility issue as it relates to us, because there is no merit  
4 even if you accepted the truth of what they say, and it's not  
5 there and there's no basis for it.

6 Indeed, your Honor, today's declaration put in by  
7 Mr. Jones, his multipage declaration effectively admits there  
8 was no basis for bringing the complaint against our complaints  
9 to begin with. So everything he said in there is Combs  
10 supposedly told him. There's not a single factual basis for  
11 the claims they've made against us based upon Jones' own  
12 declaration. So there's a futility issue. The reason why we  
13 moved, even when they were percolating with a second amended  
14 complaint, is our clients have been the subject of attacks on  
15 the internet, on social media for something they haven't done,  
16 and it's deeply disturbing.

17 MR. BLACKBURN: Your Honor, could I say something,  
18 please? This is Tyrone Blackburn.

19 THE COURT: Yes, Mr. Blackburn.

20 MR. BLACKBURN: Thank you. The complaint is not  
21 futile at all, your Honor. UMG is attempting to escape their  
22 responsibilities pursuant to their own contract and their own  
23 agreement that they provided Mr. Combs and Love Records for the  
24 establishment of the Love Record label as well as the  
25 establishment and the distribution of the Love album. When my



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1 client first filed this complaint, when he provided it to us,  
2 he did not have the contract between UMG and Mr. Combs and Love  
3 Records. That only came to light through the motion to  
4 dismiss.

5 In that contract, it is clear that UMG did not follow  
6 what they put in there and what they claim to have set out for  
7 themselves, and, you know, a lot of things --

8 THE COURT: So without that information, you thought  
9 it was appropriate to file a complaint simply asserting that  
10 Motown was the parent company of Love Records with no basis?

11 MR. BLACKBURN: No, no. Your Honor, that was based on  
12 what Motown placed on their web site, what UMG placed on their  
13 website -- on LinkedIn, and what my client was told when he was  
14 working and living with Mr. Combs for over 13 months. So it's  
15 about what we had in the public domain, and it's about what my  
16 client knew and what my client spoke to Mr. Combs about  
17 directly. So it's not like we just made things up out of thin  
18 air.

19 When Ethiopia provided us her declaration, and prior  
20 to that, leading up to getting her declaration speaking with  
21 her counsel, she gave us additional insight, which was not  
22 placed in the declaration, which I spoke to my client about and  
23 informed him about. And we made the decision to move forward  
24 and remove her from the complaint in exchange for her  
25 declaration and to amend the complaint with the new information

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1 that some supports what my client new in the real time from  
2 what he learned from Mr. Combs, and some of it was contradicted  
3 by what Ethiopia share and what UMG's counsel provided in their  
4 letter. So doing our due diligence, we moved to update the  
5 complaint to make it more factually correct.

6 THE COURT: Understood. At a high level, let me just  
7 try to understand the theory here as to UMG. UMG had a license  
8 as to one of Mr. Combs' records, albums.

9 MR. BLACKBURN: It's two, your Honor.

10 THE COURT: Okay, maybe two. I don't know. But  
11 you're saying, because this company was paying money to Sean  
12 Combs, that it's responsible for the sexual assaults and other  
13 conduct by Mr. Combs in his home; is that the theory?

14 MR. BLACKBURN: No, no, no, no. It's beyond that,  
15 your Honor. The theory is that they were intentionally  
16 complacent with what they did Mr. Combs. They gave  
17 Mr. Combs -- if you look at the agreement in Section 7.2 of the  
18 agreement, they gave Mr. Combs \$1.3 million upon him signing  
19 the agreement. But then they contradict themselves in Sections  
20 4.2(a), 4.2(b) and 4.4 of the agreement because they say they  
21 would be providing oversight, that Mr. Combs had to come to  
22 them to get permission to hire producers. That never happened.  
23 Mr. Combs was required to get agreements written and signed by  
24 producers approved by Motown. That never happened. Mr. Combs  
25 was Motown to administer the approved budget for all approved

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1 recording costs for the production of the album. That never  
2 happened. They just gave him \$1.3 million, and he used it to  
3 pay for sex workers, to purchase drugs, to do a lot of other  
4 things other than make music. Because if he used it for the  
5 music, Mr. Jones would have been paid. He was not paid.  
6 Mr. Jones produced nine songs.

7 THE COURT: The fact that he had a deal with his  
8 record company to pay him, and there was certain oversight the  
9 company was supposed to give, makes them responsible for all  
10 these things that he did in his house?

11 MR. BLACKBURN: Not just his house, your Honor. It  
12 wasn't just his house. It was a yacht. It was the Chalice  
13 Recording Studios. I can provide you two recordings of sex  
14 workers in Chalice Recording Studios. I can provide you with  
15 several recordings on the yacht where there was a makeshift --  
16 makeshift studio where there were sex workers knocked out.

17 THE COURT: Sure. An employer can be responsible for  
18 improper employment of workers, failure to pay and sexual  
19 misconduct that happens in the workplace. You are not  
20 suggesting that the UMG defendants are employers of Mr. Combs,  
21 are they?

22 MR. BLACKBURN: I'm suggesting they are partners with  
23 Mr. Combs, joint partners with Mr. Combs. They are trying to  
24 create this -- this, you know, smoke and mirrors type of  
25 approach, that oh, you know, we were just here to distribute

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1 one album, but then you do nothing that the contract says that  
2 you are supposed to do. You contradict yourself from paragraph  
3 four to paragraph seven if your own agreement. You pay him  
4 \$1.3 million. You're not minding the money at all. I read  
5 this contract is a ruse to just give him whatever he wants to  
6 use the money to do whatever he wants with it. Okay, and this  
7 is a -- this is one example of multiple years of a pattern and  
8 practice of them doing this exact same thing with him.

9 THE COURT: Giving him money?

10 MR. BLACKBURN: Giving him money and allowing him to  
11 do whatever he wants. Like, for instance, when he was with Bad  
12 Boy Records a few years back, he physically assaulted Steve  
13 Stoute, which is one of their VPs. He continued working with  
14 them for multiple years after that. Right? So it's not  
15 like -- it's not like they were -- they were unaware that this  
16 money has problems. They knew this, but they took profits over  
17 people. They put their profits and their bottom line over what  
18 was consciously the right thing to do. And they knew or should  
19 have known that they were required to give this man overtime,  
20 and they didn't. And they wrote it in the contract and did not  
21 execute the contract as written. So they are equally as  
22 liable. And now they want to, because he got raided, want to  
23 say that they were not general business partners with him.

24 THE COURT: Okay. Well, since I gave him a chance,  
25 Mr. Zakarin, I'll give you a chance just at a high level. I

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1 wasn't really planning to get into the merits too deeply, but  
2 if you want to respond to that, you may.

3 MR. ZAKARIN: Sure. This was a distribution license  
4 for one album, and it's a standard agreement. There's nothing  
5 unusual. The only thing that made it different was that most  
6 of the recordings, or many of the recordings, had been already  
7 done. As was stated in Ms. Habtemariam's declaration, the  
8 original contemplation was he had recorded a lot of these  
9 recordings already, and that's why the million-three was going  
10 to be paid upon execution to repay him, and it says it very  
11 clearly in the agreement, to repay him for or reimburse him for  
12 the costs he had already incurred. That's why it was paid.  
13 And there were other recording costs that would come up, and  
14 they agreed to fund those recording costs. There's a specific  
15 provision in the agreement that makes it clear, it was no  
16 partnership. They were independent contractors. It is the  
17 standard agreement.

18 Now, in the original complaint, Motown was supposedly  
19 the parent company, and employed under Respondeat Superior  
20 basis all of these, you know, Combs and everybody else. That  
21 theory is junked for a partnership, which is equally baseless.  
22 There was no partnership. It was a distribution deal.  
23 Colloquially termed, you know, with their partners in this  
24 album. Yeah, they were partners in that they were distributing  
25 or going to distribute the album.

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1           As it happened, Motown didn't distribute the album.  
2           Ms. Habtemariam left Motown in 2022, so she couldn't have been  
3           at all of these activities that were alleged by the plaintiff.  
4           After she was gone, the contract was terminated. Motown and  
5           Combs decided they did not want to go forward together, and  
6           they terminated the agreement. So the album was never even  
7           distributed by Motown or Universal. This whole notion of  
8           partners and that we should have known, and because 20 years  
9           ago, Combs supposedly injured or had a fight with Steve Stoute,  
10          everybody should have known everything.

11           Money -- and we've said it in our papers. Money is  
12          fungible. Combs was a very rich man. Combs was reputed in  
13          2022 to be a billionaire. I haven't counted his money, but I  
14          have no doubt that he's wealthy. He gets paid a lot of money  
15          by Diageo for his alcohol brands. You know, under the  
16          plaintiff's theory, Diageo should be a defendant because they  
17          pay money to Combs. The bank that pays Combs interest -- if he  
18          is worth a billion dollars, I assume he's getting interest  
19          someplace -- they should be a defendant because they pay him  
20          interest.

21           Mr. Blackburn doesn't seem to understand that in  
22          transactions, a normal transaction where one party pays the  
23          other party money, they don't have oversight. They don't have  
24          control, and they don't get to dictate whether that money is  
25          used or somebody else's money is used or how Combs or Love

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1 Records used their money. It's just not the way that it works  
2 because money is fungible. If Combs did any of the things that  
3 the plaintiff alleges that he did, he used whatever money he  
4 had to do it, and you cannot and they will not be able to and  
5 they couldn't ever trace it to us or to Diageo or to any bank  
6 or to any brokerage.

7 It is a completely frivolous claim, and it's a  
8 frivolous claim with the false allegations about Grainge being  
9 at these sex parties. That was the original theory that they  
10 should have known, and we saw it and we could control it  
11 because we were there. Now, what's the basis? Not that he was  
12 ever there, and by the way, he wasn't there. He had denied  
13 that he was ever there. And the basis is, well, you've got  
14 Jones saying well, Combs told me he was there. They have a  
15 picture of Grainge in the complaint. And by the way, they've  
16 published his addresses in the complaint, so that he has now  
17 had to beef up security because of all of these accusations  
18 being made. But there's a picture of him. Does the plaintiff  
19 say, oh, yeah, that was the guy I saw, which he couldn't say  
20 because it would be a lie. But he wants to say that Combs told  
21 me he was there, and he wasn't.

22 There's not a single thing in any of these complaints  
23 that have the slightest factual basis. And if the sole basis  
24 for the claims is (A) Combs told me, and at the same time he is  
25 saying Combs is this incredibly disreputable person, but on

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1 this he speaks the truth, it's not true. I don't believe that  
2 Combs ever told him any of these things, and if he did, that's  
3 not a basis for bringing these kinds of claims against anybody.  
4 And in terms of the money, what Mr. Blackburn has said doesn't  
5 make out a case. It doesn't make out a claim under the sex  
6 trafficking laws, under RICO. He cannot state a claim. He  
7 hasn't stated a claim, not in the first amended complaint, not  
8 in the original complaint, not in his proposed second amended  
9 complaint. There's just no basis for it, and our clients have  
10 had their reputations improperly, unnecessarily and offensively  
11 degraded based upon Mr. Combs told me this; Mr. Combs told me  
12 that. It's unbelievable. I've never seen anything like it,  
13 your Honor. To have these kinds of salacious allegations based  
14 upon a supposition, a belief or what Combs told me, that's not  
15 a good-faith investigation of the facts by Mr. Blackburn.

16 MR. BLACKBURN: Your Honor, can I say something,  
17 please?

18 THE COURT: Sure.

19 MR. BLACKBURN: Thank you. So, your Honor, earlier  
20 counsel said that the recordings were made prior to, which is  
21 why -- prior to Mr. Combs and Love Records entering into the  
22 arrangement with Motown and UMG. That is demonstrably false.  
23 We have every recording that was made for Love Records. They  
24 are all timestamped. Mr. Jones has everything. There are five  
25 or six versions of them. They are timestamped. They are --



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1 you can figure out when they were made, how many times they  
2 were edited, who edited, time plates, all of those things. And  
3 none of this stuff was done prior to Mr. Combs entering into  
4 the business agreement -- business arrangement with Motown and  
5 UMG. And if UMG had done their due diligence, they would have  
6 known that instead of paying him \$1.3 just based on his word.

7 If Mr. Grainge is wrong for taking Mr. Combs' word for  
8 it, UMG is equally wrong for taking Mr. Combs' word for it.  
9 He's wrong saying when these records were actually created.  
10 Counsel also says that that partnership was just a turn of  
11 phrase. It was just used loosely online, but partnerships in  
12 practice is very, very different than you just saying we're  
13 partnering to create an album. That's not what they say. They  
14 said we had partnered with Mr. Combs to establish Love Records,  
15 and to distribute his first -- his first album. Okay.

16 They made a distinction that they were establishing a  
17 label with him, and then they were distributing an album.  
18 Okay, so UMG, from what I understand, is a publicly traded  
19 company, and the things you say in the public matters. It's  
20 all regulated by the FCC, so I don't even know what they are  
21 trying to pull now because his mansion has been raided. He  
22 says that the agreement between UMG and Mr. Combs is strictly  
23 a -- a distribution deal. But if you read the agreement,  
24 4.02(a) Love Records must submit budgets for approval. Okay.

25 Where are the budgets? Where are the budgets? Show

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1 me what he submitted? Where is the itemized budget list to  
2 show which producers were paid, which songwriters were paid?  
3 Did you pay Chalice Recording Studios? Where is the budget  
4 submitted? Or did you just give them a blank check, which is  
5 what you did, and did not ask him for any receipts, which I  
6 know you do not have. Okay. 4.02(b) Motown administers the  
7 authorized budget and shall pay the recording costs for the  
8 productions. Okay. That doesn't sound like a partnership to  
9 me because you are taking an active role in the running and the  
10 distribution of the business and how -- how the money was to be  
11 deviated and shared out.

12 You cannot have it both ways. That's exactly what  
13 they are trying to do. They are trying to rewrite history  
14 because of the events of March 25, 2024. That is what they are  
15 trying to do. Okay. I can keep going.

16 THE COURT: I'm not hearing anything that would  
17 plausibly give rise to a theory that would make UMG liable  
18 because they gave him money and because they had a deal with  
19 respect to budgets and overseeing certain aspects of their  
20 distribution arrangement, that they had a duty to babysit him  
21 and prevent him from doing all these bad things and that  
22 somehow gives rise to liability on the part of the company, I  
23 just don't know of any authority for that. But, you know,  
24 maybe on the motion, you'll respond to that?

25 MR. BLACKBURN: Yeah, I mean, your Honor, I definitely

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1 will. I think that pursuant -- you know, in one of their  
2 letters they claim that New York State General Partnership Law  
3 does not apply but California does. Well, you know the laws  
4 are pretty much identical. So, you know, we will definitely  
5 address that on their motion.

6 But in addition to that, your Honor, there are other  
7 provisions of this agreement as well as their actions. He  
8 said -- he says that Ethiopia and Lucian were not present at  
9 Mr. Combs' house at the time that Mr. Jones was working there.  
10 But there were other executives present in the house, at  
11 Chalice Recording Studios, on the yacht from December to  
12 January, in the studio. I didn't name them in the complaint  
13 and I'm not going to do that now because there are more than 30  
14 people on this call. So I won't do that, but I would be more  
15 than happy to provide the Court with additional documentation  
16 to substantiate what he says in the complaint.

17 THE COURT: So just so be clear, the second amended  
18 complaint, the one you've now requested leave, that is what you  
19 want to be the operative complaint? I'm not going to get  
20 another one now, right?

21 MR. BLACKBURN: No, no, no, no, your Honor. No. You  
22 know, I looked at -- I looked at the letter in opposition, and,  
23 you know, defendants said that one of the -- well, I'll only  
24 agree that only one of the potential TVPA causes of action may  
25 not be actionable, but everything else I think we're fine on.

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1 So that's only the thing.

2 THE COURT: Sorry I didn't follow that. TVPA?

3 MR. BLACKBURN: Yep, yep. I'll tell you which one it  
4 is.

5 THE COURT: Are you saying that one of the complaints  
6 in the second amended complaint you want to drop now?

7 MR. BLACKBURN: No, no, no. I'm saying they raised  
8 concern that one of causes of action in their letter,  
9 opposition. You know, I went back and I reviewed it, and I'm  
10 going to concede that that one cause of action is going to be  
11 withdrawn from the second amended complaint. But the remaining  
12 causes of action are fine, I think.

13 THE COURT: So you are dropping one?

14 MR. BLACKBURN: One, just one cause of action, based  
15 on --

16 THE COURT: Which one was that?

17 MR. BLACKBURN: I'll tell you right now, one second.

18 MR. ZAKARIN: Your Honor, this is Don Zakarin again,  
19 if I might? If what Mr. Blackburn is referring to was the  
20 original claim that UMG was somehow responsible for the  
21 security at Chalice Studios, I think that's a claim that he has  
22 dropped, that had no basis to begin with. But if that's what  
23 Mr. Blackburn is referring to, he did drop that from the  
24 second -- from the various iterations of the second amended  
25 complaint.

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1 MR. BLACKBURN: No, that's not it. I believe what you  
2 wrote -- okay. You claimed that the obstruction was not valid,  
3 but I have case law that says it is.

4 MR. ZAKARIN: So you are dropping then something  
5 additional, the obstruction claim; is that what you're saying?

6 MR. BLACKBURN: No, no, no, you claimed that the  
7 obstruction claim is not valid. That is actually pretty valid.  
8 You saw that in my letter that I wrote (inaudible).

9 (Reporter clarified)

10 In the Southern District of New York, there's a case  
11 with Mr. Epstein, where it says, I believe, that it was  
12 Judge -- I submitted it earlier. It was -- one second.

13 MR. ZAKARIN: Your Honor, we cited. We referenced  
14 Judge Rakoff's decision.

15 MR. BLACKBURN: Yeah, Judge Rakoff's decision, and  
16 that applies to our case as well.

17 MR. ZAKARIN: If I can, your Honor, that was just  
18 another -- that was just an additional basis on which most of  
19 the courts that have considered it have found that it doesn't  
20 exist, except with respect to the government. We've cited  
21 those cases as well, but that was only one basis on which the  
22 claim has no standing at all. That's not a viable claim.  
23 There were other bases as well. I think your Honor has  
24 indicated those things already as well today.

25 THE COURT: Are you talking about the sixth cause of

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1 action, Trafficking and Victims Protection Act? The TVPA, is  
2 that the claim you are talking about?

3 MR. BLACKBURN: No, no, no. We're keeping that, but  
4 the issue I believe that counsel raised, I had it --

5 THE COURT: Let me go back to Mr. Zakarin. I'm not  
6 going to wade through a bunch of letters, and I'm not going to  
7 decide a motion to dismiss based on a complaint that has been  
8 superseded. It just doesn't make sense. Among other things,  
9 in your Rule 11 letter, Mr. Zakarin, dated March 4, you said  
10 you can avoid a Rule 11 violation only by withdrawing the  
11 complaint or immediately amending it to remove all allegations  
12 and claims against our client. Now, it's true you said "all  
13 allegations", but he did remove some of them and filed a second  
14 amended complaint. And you want me to deny his filing the  
15 second amended complaint and make me decide a motion about  
16 other allegations that would not otherwise be before me. It  
17 doesn't make sense.

18 The Second Circuit has held that when a new complaint  
19 is filed, the Court looks at the allegations in the most recent  
20 complaint because that complaint supersedes the original  
21 complaint. A statement in a written complaint that is  
22 superseded by an amended complaint, no longer a conclusive  
23 judicial admission. However, the fact finder may find a  
24 contradictory statement in the earlier complaint and consider  
25 that for credibility purposes. So what I'm saying is I would

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1 like to decide the motion to dismiss based on the new  
2 complaint, but on Rule 11, you can point stuff in the earlier  
3 complaint that you want to point out contradictions, et cetera.

4 MR. ZAKARIN: Sure. I understand, your Honor. I  
5 understand the practicality of it. As I said, our approach was  
6 predicated on getting this done quickly for the benefit of our  
7 clients, but in addition because the second amended complaint,  
8 as I said, even though it withdrew some of the more salacious  
9 allegations -- although, Mr. Blackburn in his letter today  
10 seems to want to hold on to those salacious allegations --  
11 because the claims -- our view of amending, would be that it  
12 would be futile to amend because he still doesn't have a claim.  
13 But where your Honor is going, and I seem to understand it, if  
14 your Honor is going to allow him to amend to the second amended  
15 complaint, what we would do is simply revise our motion to  
16 dismiss and address it to the second amended complaint, because  
17 it would be substantially the same, except, you know, changing  
18 it to address the, you know, the allegations that are  
19 different.

20 THE COURT: Right. I think that makes sense from my  
21 perspective, and I understand why you did it this way  
22 certainly. But I think in terms of all of the motions I have  
23 to decide in all of my cases, I think it would be helpful for  
24 me if I would just have one operative complaint, and allow the  
25 plaintiff to file that second amended complaint. And then,

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1 have you file a new motion that is addressed to those  
2 allegations.

3 Look, I'd remind everyone this is a 12(b)(6) motion,  
4 and the focus is assuming the truth of well-pleaded  
5 allegations, does it state a claim? Assuming the well-stated  
6 allegations, is there a legal theory that supports the claims  
7 against UMG defendants? Now, I understand that sometimes you  
8 want to say there isn't a well-pleaded factual allegation  
9 because it's conclusory, but to the extent we're ruling outside  
10 the pleadings as to things that aren't integral to the  
11 complaint, there's only so much I can do in terms of -- I mean,  
12 I can't look outside those pleadings. I know you understand  
13 that, and part of what you're doing here is expressing the  
14 reaction of your clients to these allegations, which you said  
15 what you need to say about that. But I just want to focus you  
16 on the legal sufficiency of the allegations and not anything  
17 extraneous to the complaint.

18 MR. ZAKARIN: Thank you. Your Honor, I fully  
19 understand that. I mean, I do think there's an element of what  
20 is integral to this complaint, these kinds of complaints, and  
21 so, I think there is some latitude there. But I would also say  
22 very candidly that if it gets to that, we are not uncomfortable  
23 with, you know, the motion, if it should happen, being  
24 converted to summary judgment as well, because we just know  
25 that there is no legal or factual basis for the claims here.



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1 And again, as I said, Mr. Jones' declaration today, which is --  
2 it shows you just how little knowledge and information they had  
3 to bring these claims to begin with.

4 THE COURT: Okay. Well, let's leave it there. As  
5 discussed, I'm going to grant the letter motion for leave to  
6 file the second amended complaint requested by plaintiff, and  
7 then you can file a motion directed to that as discussed. How  
8 much time would you like for that, Mr. Zakarin?

9 MR. ZAKARIN: If I can, your Honor, I've got a Second  
10 Circuit argument next week that I want to try to turn to. I  
11 would think that we could turn it around -- I'm looking at my  
12 team who is looking at me badly. I'm thinking a maximum of  
13 three weeks.

14 THE COURT: That's fine.

15 MR. ZAKARIN: We'll turn it around in three weeks.

16 THE COURT: Okay. That's fine. Three weeks, that's  
17 April 30. And how long would you like to file a response,  
18 Mr. Blackburn?

19 MR. BLACKBURN: I'll tell you.

20 THE COURT: Three weeks?

21 MR. BLACKBURN: Yeah, that's fine.

22 THE COURT: Two or three?

23 MR. BLACKBURN: Three weeks is fine.

24 THE COURT: Okay. So you'll have three weeks. And  
25 then, would you like two weeks for the reply, Mr. Zakarin?

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1 MR. BLACKBURN: Yes, please, your Honor.

2 THE COURT: Three, three and two weeks, and we'll go  
3 from there. Is there anything else that you-all want to  
4 address today, Mr. Blackburn?

5 MR. BLACKBURN: No. I just want to let the Court know  
6 that the aiding and abetting claim is the one that I was  
7 referring to. I wanted to update the Court on that, but I have  
8 nothing else.

9 THE COURT: So can we treat that as a withdrawal of  
10 the aiding and abetting claim?

11 MR. BLACKBURN: As to -- as to UMG, yes.

12 THE COURT: All right. So Mr. Zakarin, for purposes  
13 of your motion, you can just indicate in a footnote that  
14 Mr. Blackburn is stating on the record that the aiding and  
15 abetting claim is withdrawn as to your three clients.

16 MR. ZAKARIN: Thank you, your Honor. We'll note that.

17 THE COURT: Anything else from defendant?

18 MR. ZAKARIN: I don't think so. Not from us, your  
19 Honor.

20 THE COURT: All right. Thanks, everybody.

21 MR. ZAKARIN: Thank you, your Honor.

22 THE COURT: We're adjourned. Bye now.

23 (Adjourned)

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